

**Superior Court of California
County of Riverside**

Court Policy Memorandum #C.4.2 (Criminal)

November 21, 2007

TO: Judges and Commissioners, District Attorney, County Counsel, All Private Counsel, Public Defender, County Executive Office, Court Executive Officer

FROM: Richard T. Fields, Presiding Judge

SUBJECT: Funding of Investigation Costs

REFERENCE: Penal Code Section 987.9
Penal Code Section 987.2
Riverside County Board of Supervisors Meeting, October 16, 2007
– Agenda Item 3.9

APPLICABILITY: Criminal Divisions, Countywide

SUPERCEDES: CPM dated April 20, 2007 – Funding of Investigative Costs

PENAL CODE SECTION 987.9 CASES

I. Applicability

Penal Code Section 987.9 provides at county expense for payments of investigators, experts, and other costs that are reasonably necessary for the preparation or presentation of defense. Two types of cases qualify:

- First Degree Murder (death penalty) capital cases; and
- Second Degree Murder, wherein the defendant has served a prior prison term for murder in the first or second degree [Penal Code 190.05(a)].

II. Pay Panel Judge

The Presiding Judge shall annually appoint three judicial officers and one alternate to serve as the Pay Judge Panel. The purpose of this panel shall be to independently review requests for investigative funds in cases pursuant to Penal Code Section 987.9. The trial judge shall not review such requests. In the event of differing responses, a simple majority of Pay Judges concurring shall determine the court's ruling.

III. Initial Requests

Upon the filing of a criminal complaint wherein the defendant is exposed to the death penalty, defense counsel is eligible for funding for investigative costs upon

written application to the court. Initial requests shall be made by motion and supported by declaration or affidavit of counsel specifying:

- a.) Defendant is indigent and the prosecution is seeking (or may seek) death as a penalty. An express finding of indigency must be made on the record in court by the trial judge, if the defendant is either represented by private counsel but claims to be indigent or the defendant is self-represented (a copy of the minute order must be attached to the motion in these instances).
- b.) Purposes for which funds are reasonably necessary;
- c.) Names, rate of pay (or fee), other costs and services required for investigators, experts, consultants, or others;
- d.) Specific information as to travel expenses, office supplies or equipment, or other claimable costs for parties referenced in c.) above.
- e.) Additional supporting statements may be requested of counsel to clarify questions. An oral in-camera explanation may also be requested.

IV. Subsequent Requests

Subsequent requests for funding shall state whether or not the District Attorney has filed notice to seek death.

V. Submittal of Requests

All requests shall be forwarded to the Court Executive Office for preparation and submission to the Pay Judge Panel for review.

VI. Confidentiality

All documents pertaining to application and order for Penal Code Section 987.9 funds will be confidential and secured in the Court's Executive Office until such time as the record is certified to the Supreme Court, or the defendant no longer may be sentenced to death as a penalty.

VII. Guidelines for Review By Pay Judge Panel

Pay Judges will use the following guidelines in determining the reasonableness of requests:

- a.) With respect to the initial funding request, counsel need only confirm facts set forth in Section III above. Upon submission of the initial funding request, the court will authorize expenditures determined to be reasonably necessary for securing the initial discovery and investigation;
- b.) It shall be the obligation of counsel, whenever possible and without violating the attorney-client privilege and professional code of conduct, to make requests as specific, thorough, and accurate as possible, consistent with the facts of a given case. Contacts and activities are to be named in the billing submitted by investigators.
- c.) If funds are required beyond the initial funding, it shall be a primary responsibility of counsel in formulating supplemental requests to obtain accurate estimates of additional expenditures and to set forth same with specificity.

- d.) Counsel recognizes the obligation to supervise, control and oversee the expenditure of any and all funds, and shall direct the activities of recipients of these funds to ensure maximum benefit and use of public monies.
- e.) Prior to requesting funds for travel or allied expenses, it shall be the obligation of counsel to exhaust other less expensive means of investigation (telephone, FAX, etc.) to ensure that requested travel is necessary.
- f.) In preparing a request for funds, counsel shall anticipate a delay of two weeks for processing and action on the requested funds.

VIII. Eligible v. Ineligible Costs

The State Controller has identified the following costs are not eligible for reimbursement through 987.9 funds:

- a.) Dental plates, haircuts, and other expenses relating to improving the defendant's personal appearance;
- b.) Clothing;
- c.) Cleaning charges (clothing);
- d.) Cash to defendant;
- e.) Attorney fees or expenses whether or not attorney of record;
- f.) Any cost incurred after the case against the indigent defendant no longer involves the death penalty;
- g.) Surveys, research projects, or classes/seminars, books or manuals not admitted as evidence.

Other costs not listed above may also be ineligible for reimbursement if they are not allowable under the code.

Out-of-state travel will be allowed upon prior written authorization by the Pay Judge Panel. Receipts must be submitted and costs must be reasonable.

Transportation costs (witnesses) will be reimbursed for the least expensive mode of transportation, considering both direct expense as well as staff time. Receipts must be submitted and costs must be reasonable.

Standard Rates:

The following rates apply to work performed by licensed investigators on or after January 1, 2008:

\$38/hour – Death penalty cases

\$32/hour – Non-death penalty cases

Ordinary overhead, included in the above rates, includes:

- Postage
- Local telephone calls and faxes

- Time to prepare and review billings
- Local travel
- Meals

Extraordinary expenses, which may be claimed separately, include:

- Long distance telephone calls (itemized)
- Express delivery (when deemed necessary)
- Nonstandard photocopy charges – must include receipts and explanation
- Basic office supplies for use by self-represented clients
- Travel time, using the most direct or quickest route
- Out of town travel (with prior authorization)

Mileage (county-approved standard rate).

IX. *In-Camera Hearing*

Counsel may request an in-camera hearing if their request for funds is either fully or partially denied by the Pay Judge Panel. Pay Judges must ensure that the order is made on the record at any in-camera hearing. Payment cannot be rendered if an order is not made or the transcript does not accurately reflect the order at the in-camera hearing.

PENAL CODE SECTION 987.2 CASES

X. *Applicability*

Penal Code Section 987.2 provides that in any case in which a person desires but is unable to employ counsel, assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the county general fund. If the party elects to be self-represented or if private counsel has been retained but circumstances exist which do not enable the defendant to afford further costs for investigative purposes, funds may be requested for this purpose at county's expense.

XI. *Process*

The following process will be followed for requests for investigative expenses in 987.2 matters before the court, when the party is either self-represented or if private counsel has been retained:

- a.) An express finding of indigency must be made on the record in court by the trial judge, if the defendant is either represented by private counsel but claims to be indigent or the defendant is self-represented (a copy of the minute order must be attached to the motion in these instances). A recommendation on the indigency of a defendant in this situation may be requested of the Court's Financial Services Division if deemed necessary by the judicial officer.
- b.) If no finding of indigency is made on the record, the case must be referred back to the trial judge for this finding to be made.
- c.) Requests for investigative funds shall be reviewed as follows:
 - i. Represented by private counsel – requesting attorney to submit request, along with a declaration or copy of the minute order showing the finding of indigency, to the Court Executive Office. The Court Executive Office shall prepare the proper documentation in the same manner as all PC 987.9 matters by utilizing the Pay Judge Panel (see Sections III through IX, excluding any reference to the death penalty). The Pay Judge Panel will individually review such requests using the guidelines set forth in Section VII of this policy (with the exception of the requirement regarding the death penalty).
 - ii. Self-represented – directly by the trial judge.

EFFECTIVE: Immediately

/s/
RICHARD T. FIELDS
Presiding Judge

Drafter's Notes: Until 2006, various different policies existed on this subject. In addition, no set process was put into place regarding the review and approval of funds in 987.2 matters. At the request of the 987.9 Pay Judge Panel of 2006 and the Presiding Judge, a process was developed and agreed upon. All previous policies on this subject were combined into one.

The November 2007 revised policy incorporates updated hourly rates paid to investigators as approved by the Riverside County Board of Supervisors on October 16, 2007.